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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,591	12/12/2003	Annastacia Kistler	KCC 4930 (K-C 17,729)	1754

321 7590 05/17/2007  
SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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KENNEDY, SHARON E

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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05/17/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

## Office Action Summary

Application No.

10/735,591

Applicant(s)

KISTLER ET AL.

Examiner

Sharon E. Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 37-69, 91-104 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-36 is/are allowed.
- 6) ☒ Claim(s) 1, 8-19 and 70-90 is/are rejected.
- 7) ☒ Claim(s) 2-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/14/2005</u> <u>03/26/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Group I in the reply filed on March 22, 2007 is acknowledged. Claims 37-69, 91-104 are withdrawn from further consideration.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 70-90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 70+, the cleaning value, and gentleness value, no patent exists other than applicant's instant application that even mentions these types of tests in combination with a skin wipe. It is impossible for the examiner to make a comparison with the prior art, accordingly, examination of these types of claims cannot be fairly made. A potential infringer can in no way fairly and accurately predict how applicant will precede with these types of claims, once granted. The examiner has no way of knowing if, for example, WetOnes, used in the 1970's, have these types of values, or if any of the currently sold baby wipes anticipate these values. What about the application of Noxema on one of those commonly sold compressed cotton pads to remove makeup? The examiner has been doing this for some time. It certainly seems soft, and removes all of the makeup completely. Does this anticipate the claims? Who knows. Note is made of the particles of thermoplastic

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polymer. Does SoftScrub applied to a toilet tissue meet the claims? Unknown.

Further, applicant is well aware that a patent cannot be granted for the invention of a mathematical test. Of course, applicant combines the test with the flimsiest of structures, a "tissue." This does not help. Accordingly, the claims are vague and indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 12, 15, 18, 19, 70, 71, 72, 83, 86, 89, 90 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lukenbach, WO 01/01949. Broadly interpreted, applicant's claims are anticipated by Lukenbach. See especially example 20. Lukenbach discloses an emulsion applied to a wipe, the emulsion comprising a xanthan gum, anticipating the claimed water soluble neutral oligosaccharide, and Sepigel 502. Sepigel 502, comprises, e.g., polyacrylate, which anticipates applicant's claimed thermoplastic polymer. Regarding claims 15 and 86, note that the composition is applied in an amount equivalent to 325% as stated on page 45, line 21.

Claims 1, 8-11, 70-72, 79-82 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vatter, US 2002/0015684. Vatter discloses the silicone elastomer

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particles in combination with various solidifying agents such as xanthan gum and starch [0069]+, which may be applied to various substrates [0093]+.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13, 14, 16, 17, 84, 85, 87, 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lukenbach. It would be obvious to one of ordinary skill in the art to modify the amount of applied cleansing composition dependent upon the strength, absorbability, etc., of the tissue to which it is applied.

### ***Allowable Subject Matter***

Claims 20-36 are allowed.

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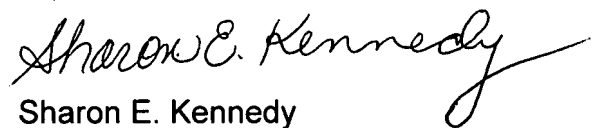
Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 73-78 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on 571/272-8373.



Sharon E. Kennedy  
Primary Examiner  
Art Unit 1615